ORIGINAL

EX PARTE OR LATE FILED

ORIGINAL

DOW, LOHNES & ALBERTSON, PLLC
ATTORNEYS AT LAW

J.G. HARRINGTON
DIRECT DIAL 202-776-2818
jharrington@dlalaw.com

WASHINGTON, D.C.
1200 NEW HAMPSHIRE AVENUE, N.W. • SUITE 800 • WASHINGTON, D.C. 20036-6802
TELEPHONE 202-776-2000 • FACSIMILE 202-776-2222

ONE RAVINIA DRIVE • SUITE 1600
ATLANTA, GEORGIA 30346-2108
TELEPHONE 770-901-8800
FACSIMILE 770-901-8874

April 5, 2002

RECEIVED

APR 05 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana
CC Docket No. 02-35
WRITTEN EX PARTE PRESENTATION

Dear Mr. Caton:

I am writing on behalf of our client Triton PCS License Company, L.L.C. ("Triton"), in response to the March 20, 2002, letter of Sean A. Lev, counsel to BellSouth in the above-referenced proceeding.[1] As described in more detail below, Mr. Lev's letter seriously mischaracterizes the nature of the issue raised in Triton's comments in the proceeding. Moreover, the modification to BellSouth's interconnection policies, which BellSouth did not communicate to Triton, does not fully address the concerns that led Triton to file its comments. Consequently, BellSouth remains out of compliance with the requirements of checklist items one and nine.

Triton's comments showed that BellSouth had adopted a region-wide policy of refusing to interconnect with NXX codes with rating points outside the BellSouth territory. As described in Triton's comments, that policy violated BellSouth's obligation to interconnect under Section 251(c) of the Communications Act (the "Act") and the Commission's rules and also with its obligation to comply with numbering administration requirements under Section 251(e) of the Act and the Commission's rules. BellSouth does not deny that it adopted this new policy just before filing the Section 271 applications that are the subject of this proceeding or that the effect of its policy was to deny interconnection to Triton and other carriers that are using numbering resources in accordance with the Commission's rules and the policies of NeuStar as numbering administrator. Indeed, BellSouth's defense has little to do with the actual issue raised by Triton.

[1] Letter from Sean A. Lev , counsel to BellSouth, to William Caton, Acting Secretary, FCC, March 20, 2002 (the "Lev Ex Parte").

No. of Copies rec'd 0+1
List ABCDE

First, BellSouth claims that the issue raised by Triton is a matter of the appropriate compensation for carrying calls to and from Triton subscribers.[2] This is wrong. Neither BellSouth's initial policy nor its revised policy contains any reference to failure to pay appropriate compensation. Rather, both apply whenever a carrier activates an NXX code with a rating point outside BellSouth territory.[3] Further, as described in the Declaration of Donna Bryant, attached hereto as Exhibit 1, BellSouth never has told Triton that this is an issue of compensation from Triton or that BellSouth would be willing to carry traffic to and from out-of-territory NXX codes if appropriately compensated by Triton. Instead, BellSouth has insisted flatly that it will not carry such traffic.

Moreover, to the extent there were any issue of compensation for the "extra" costs of carrying traffic to and from out-of-territory NXX codes, Triton would not be responsible for those costs. In the example that BellSouth uses in its letter, the traffic originates with another incumbent LEC, and therefore the incumbent LEC would be responsible for transiting fees or whatever other costs it incurred from BellSouth for transport of the traffic. In fact, in BellSouth's example it is not the CMRS provider that is "using BellSouth's facilities," but the independent ILEC, and so the independent ILEC should compensate BellSouth appropriately.[4] For calls from BellSouth customers to Triton customers, BellSouth incurs no additional costs at all, and indeed may avoid having to pay fees to independent LECs. Further, to the extent that calls from BellSouth customers to Triton NXX codes are rated as toll calls, BellSouth also will collect toll revenues from those customers.[5]

BellSouth also fails to acknowledge that it is subject to the Commission's rules governing CMRS interconnection. For instance, the Lev Ex Parte complains that BellSouth may be deprived of access charges when a CMRS rating point is in an independent ILEC's territory and the CMRS provider's MTSO is in BellSouth territory.[6] However, the Commission's rules specifically provide that landline-CMRS traffic shall be treated as local traffic – not access traffic

---

[2] *See, e.g., id.* at 2 ("Nextel and Triton cannot explain why they should not compensate BellSouth for the costs that they cause BellSouth to incur in transporting this traffic.").

[3] *See* Triton Comments, Exhibit 2; Lev Ex Parte, Attachment A.

[4] Lev Ex Parte at 2. In this regard, BellSouth's quotation from Triton's comments in the *Intercarrier Compensation* proceeding is inapposite. Triton, of course, is willing to pay any relevant transport costs it incurs in using BellSouth's facilities to send a call from its switch to an independent ILEC's switch, and it makes such payments to BellSouth and other carriers today. Such costs are not at issue, here, however, because BellSouth's policy did not address such traffic.

[5] Even if this were a dispute over whether BellSouth should be compensated for carrying calls to Triton, BellSouth's position would be inconsistent with Commission precedent. In the *TSR Wireless* decision, the Commission held that an ILEC cannot impose charges on a CMRS provider for delivery of traffic that originates and terminates within the same MTA. TSR Wireless, LLC v. U S West Communications, Inc., *Memorandum Opinion and Order,* 15 FCC Rcd 11166 (2000 (holding that LECs may not charge for either transport or facilities for traffic they deliver to paging companies), *aff'd sub nom. Qwest Corporation v. FCC,* 252 F.3d 462 (D.C. Cir. 2001). Thus, BellSouth would not be entitled to compensation under any scenario.

[6] Lev Ex Parte at 2. In fact, BellSouth appears to believe that the practice of separating rating and routing points is improper. It is, however, standard procedure in the wireless industry, and indeed among CLECs, because it would be inefficient in the extreme to require carriers to deploy switches in each rate center where they provide service.

– whenever it is contained within a single MTA.[7] There is no exception to this rule for calls that originate from or terminate to the "territory" of another ILEC. Thus, BellSouth is not being deprived of any access revenue. Moreover, the route a call travels is irrelevant to the question of whether access charges (or toll charges) apply; all that BellSouth or any other carrier considers are the originating and terminating points of the call.

BellSouth's revised policy, while somewhat less oppressive than its January 30 policy statement, does not remedy the problem. Under the January 30 policy, BellSouth flatly refused to interconnect with out-of-territory NXXs, at any price.[8] Under the new policy, BellSouth will initially interconnect with such NXX codes, but then "will seek a declaratory ruling" from state regulators.[9] This threat to litigate cannot be seen as anything other than an effort to intimidate CMRS providers and others that seek to obtain interconnection. Moreover, as did the earlier policy, it puts BellSouth in the position of deciding which carriers are compliant and non-compliant. Those that act as BellSouth wishes will not be subject to litigation and the possibility of having to rearrange their networks. Those that do not follow BellSouth's dictates, on the other hand, run the risk of lengthy, drawn-out regulatory proceedings and expensive network reconfigurations. Indeed, if BellSouth were serious about wanting to resolve this issue, it would not threaten individual carriers with litigation, but instead would seek a declaratory ruling from this Commission or generic rulings from the relevant state commissions. The threat to litigate, consequently, is intended only to coerce interconnecting carriers into foregoing their interconnection rights. Thus, as described in the Triton Comments, BellSouth continues to violate its obligations under checklist item one, in that it refuses to provide interconnection in accordance with the statute and the Commission's rules.[10] Further, because BellSouth is basing its interconnection determinations on a faulty interpretation of the Commission's numbering rules and the policies of NeuStar as numbering administrator, BellSouth remains in violation of checklist item nine as well.[11]

Finally, the Commission should consider these issues in this proceeding. The grounds BellSouth suggests for not doing so are entirely insubstantial. First, as shown above, this is not a dispute over the terms of interconnection agreements or the compensation to be paid by Triton to BellSouth and consequently it is not the subject of any pending Commission proceeding. Second, this is not a "carrier-to-carrier" dispute, in that it involves BellSouth's region-wide interconnection policies; in fact, two different companies filed comments on the same policy. Third, BellSouth's resort to its tariffs is unavailing. Triton has not disputed the interpretation of BellSouth's tariffs, which were mentioned for the first time in the Lev Ex Parte. The tariffs are irrelevant, however, in light of the requirements of federal law. It is, after all, BellSouth's compliance with federal requirements, not its tariffs, that is at issue in this proceeding.

---

[7] 47 C.F.R. § 51.701(b)(2).
[8] Triton Comments, Exhibit 1 at 1.
[9] Lev Ex Parte at 3.
[10] Triton Comments at 3-6.
[11] *Id.* at 6-8.

In accordance with the requirements of Section 1.1206 of the Commission's Rules, an original and one copy of this written ex parte communication are being filed with the Secretary's office on this date.

Respectfully submitted,

J.G. Harrington
Counsel to Triton PCS License Company, L.L.C.

Attachment

cc (w/attach.): Renée Crittendon
Susan Pié
Leon Bowles
Arnold Chauviere
Qualex

EXHIBIT 1

Declaration of Donna Bryant

DECLARATION OF DONNA BRYANT

1 My name is Donna Bryant. I am Director, Network Design and Interconnect of Triton PCS License Company, L.L.C. ("Triton"). I am making this declaration in connection with Triton's response to the March 20, 2002, letter from Sean A. Lev, counsel to BellSouth, to William Caton, Acting Secretary of the FCC (the "Lev Ex Parte"), in the Commission's proceeding concerning the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA service in the states of Georgia and Louisiana.

2. In my role as Director, Network Design and Interconnect, I am familiar with the status of Triton's interconnection arrangements with BellSouth. As described in more detail in my earlier declaration in this proceeding, I also am familiar with the discussions between Triton and BellSouth concerning BellSouth's January 30, 2002, memorandum concerning its policy for interconnection with other carriers. I participated personally in many of those discussions and the others occurred under my direction.

3. I have read the Lev Ex Parte, including in particular its characterization of the dispute between Triton and BellSouth as a "compensation issue." This characterization is incorrect. The question of compensation between Triton and BellSouth for interconnection to NXX codes with "out-of-territory" rating points has never been raised during any conversation or correspondence in which I participated in the time before and following BellSouth's issuance of its January 30 memorandum. Further, my inquiries to those acting under my supervision indicate that the issue of compensation from Triton to BellSouth did not arise in any other interactions with BellSouth on this topic. The first time I became aware that BellSouth would characterize this as a question of compensation between Triton and BellSouth was when I read the Lev Ex Parte.

4. BellSouth never has offered to carry "out-of-territory" traffic to and from Triton for an additional charge paid by Triton, or for that matter, under any conditions at all. The only communications Triton has received from BellSouth have indicated that BellSouth either will not carry traffic to and from NXX codes with rating points outside BellSouth territory or that BellSouth will seek regulatory confirmation of its claim that it cannot carry such traffic.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 4, 2002

D E Bryant

Donna Bryant